IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.7632 OF 2005

...

M/s.IndusInd Bank Ltd. ...Petitioner

v/s.

Vishwas Steel Ltd. & ors. ...Respondents

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Ms.V.D.Jaisingh for the Petitioner.

None for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 4TH JULY, 2007

P.C.:

1. By order dated 6-3-2006 notice was issued to the Respondents. They were informed that the court may take up the petition itself for final hearing. The

Respondents are served. They are not appearing.

2. I have heard the learned Counsel for the Petitioner. It appears that the Petitioner/bank has filed recovery proceeding against the Respondents for recovery of its dues. The Respondents did not appear before the DRT. Therefore, they were proceeded exparte. The matter was fixed for filing affidavit of the bank and the original documents. It appears that the bank did not file documents and the affidavit, with the result the application was dismissed by order dated 22-4-2002. An application was made for restoration, but even that application was rejected. Against the order an appeal was carried out to DRAT being Appeal No.130 of 2004. Even that appeal was dismissed by order dated 12-7-2005.

3. It appears from the record that the Bank was not diligent in prosecuting the proceedings. But since the Respondents had not appeared before the DRT and as they were proceeded exparte, in my opinion, the courts below in stead of dismissing the application should have given an opportunity to the Bank to file its affidavit and original documents. The learned

Counsel appearing for the Petitioner states that if the Bank is granted an opportunity, the Bank will file its affidavit and original documents within a period of four weeks from today.

4. In my opinion, considering that public funds are involved and that the Respondents are also not contesting their liability to pay, following order would meet the ends of justice.

O R D E R

Orders impugned in the petition are set aside. Original Application No.559 of 2001 is restored to file. The Petitioner-bank to file its original documents and the affidavit before the DRT-III at Mumbai, within a period of four weeks from today. Thereafter, the DRT shall proceed in accordance with law. Rule made absolute with no order as to costs.

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